

# Business Associate Agreement

\_\_\_\_\_  
(Client Name)

This Business Associate Agreement (the "Agreement") is made and entered into effective as of the final date listed on page 6 of this document by and between \_\_\_\_\_ ("Client"), and **PI Back Office LLC** ("Business Associate"). "**Business Associate**" shall mean the entity listed above. Where the term "business associate" appears without capital letters, it shall have the same meaning given to the term under the Privacy Rule: "A person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to a covered entity".

A business associate is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by the contract or as required by law. A business associate is also directly liable and subject to civil penalties for failing to safeguard **electronic** protected health information in accordance with the HIPAA Security Rule.

Terms used in this Agreement that are specifically defined in HIPAA shall have the same meaning as those set forth in HIPAA. A change to HIPAA that modifies any defined HIPAA term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement. Please refer to **Definitions** found on pages five and six of this agreement.

The Business Associate shall perform business functions or activities on behalf of the **Client** (Covered Entity) involving use and/or disclosure of PHI. The Business Associate, therefore, agrees to the following terms and conditions set forth in this HIPAA Agreement.

## **Business Associate Obligations are as follows:**

- I. Business Associate shall not use or disclose PHI except for the purpose of performing Business Associate's obligations to **Client** or as permitted by law. As such, use or disclosure is limited by this Agreement. All uses and disclosures of PHI by Business Associate are subject to the minimum necessary rule of the Privacy Standards.
- II. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any agents—including subcontractors—to whom it provides PHI agree in writing to the same restrictions and conditions including but not limited to those relating to termination of the contract for improper disclosure that apply to Business Associate with respect to such information. Business Associate shall terminate any agreement with an agent or subcontractor that fails to abide by such restrictions and obligations. This includes PHI to any third party or subcontractor for any services without **Client's** written permission.
- III. Prior to making any permitted disclosure, Business Associate must obtain reasonable assurances from such third party that such PHI will be held secure and confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that any breaches of confidentiality of the PHI that become known to such third party will be immediately reported to Business Associate. As part of obtaining this reasonable assurance, Business Associate agrees to enter into a Business Associate Agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH § 13401.
- IV. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or ePHI other than as provided by this Agreement; and to implement administrative, physical, and technical safeguards as required by HIPAA Privacy & Security Rules, Code of Federal Regulations and HITECH/Omnibus in order to protect the confidentiality, integrity, and availability of Electronic Protected Health

Information (ePHI) or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Client.

- V. Business Associate agrees to adopt the technology and methodology standards provided in any guidance issued by the Secretary pursuant to HIPAA. Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement and to notify **Client** of any breach of unsecured PHI, as required under HITECH § 13402. Any additional requirements of HITECH or Omnibus that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby incorporated into this Agreement.
- VI. Business Associate shall report, in writing, to **Client** any use or disclosure of PHI that is not authorized by the Agreement. Such written notice shall be provided to **Client** within **five (5) business days** of becoming aware of such use or disclosure.
- VII. During the term of this Agreement, Business Associate shall notify **Client** within **twenty-four (24) hours** of any suspected or actual Security Incident or breach of security, intrusion, or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations, or any legal action against Business Associate arising from an alleged HIPAA violation. The notice shall include the identification of each individual whose Unsecured PHI has been or is reasonably believed by the Business Associate to have been accessed, acquired, or disclosed during the breach. Business Associate shall take prompt action to correct any such deficiencies and (see ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. The Business Associate agrees to cover the costs of notifying patients in the event of a breach.
- VIII. Business Associate shall, within **ten (10) days** of notice make available to **Client** the information required to provide an accounting of disclosures (including agents and subcontractors) to enable **Client** to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528
- IX. Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors available to **Client** for inspection and copying within **ten (10) days** of a request by **Client** to enable **Client** to fulfill its obligations under the Privacy rule, including, but not limited to, 45 CFR § 164.524.
- X. Business Associate will make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy **Client's** obligations under 45 CFR 164.526 within ten (10) days of receipt of a request from the **Client**. If an Individual request an amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate must notify the **Client** in writing within **five (5) days** of the request. Upon the approval of **Client**, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.
- XI. Business Associate will maintain and make available the information required to provide an accounting of disclosures to the **Client** as necessary to satisfy **Client's** obligations under 45 CFR 164.528; Accounting will be made available within **ten (10) business days** of receiving written request from **Client**. If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within **five business (5) days** of a request notify **Client** about such request. Business Associate and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this section for a period of **six (6) years** after termination of the Agreement.
- XII. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI available to HHS for purposes of determining **Client's** compliance with the Privacy Rule.

- XIII. Business Associate shall indemnify and hold harmless **Client** and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities, or damage, including but not limited to reasonable attorney fees incurred by **Client** arising from a violation by the Business Associate of its obligation under this Agreement. Business Associate acknowledges and stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Agreement would cause irreparable harm to **Client**, and in such event, **Client** shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorney's fees, for any such breach of the terms and conditions of this Agreement.
- XIV. Business Associate shall allow **Client** to conduct a reasonable inspection of Business Associate (or subcontractors) the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement and HITECH within **ten (10) business days** of a written request by **Client**; provided, however, that (a) Business Associate and **Client** mutually agree in advance upon the scope, location and timing of such an inspection; and (b) **Client** shall protect the confidentiality of all confidential and proprietary information of Business Associate to which **Client** has access during the course of such inspection.
- XV. Business Associate may use PHI to provide Data Aggregation services to **Client** as permitted by 45 CFR §164.504(e)(2)(I)(B).
- XVI. If Business Associate knows of a pattern of activity or practice by the **Client** that constitutes a material breach or violation of the **Client's** obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of **30 days**, Business Associate will either (a) terminate the Agreement, if feasible; or (b) report the problem to the Secretary.

### **Permitted Uses and Disclosures**

Business Associate may only use or disclose protected health information as follows:

- Business Associate may obtain PHI based on duties outlined in business agreement for services requested and no more.
- Business Associate may use PHI for the management and administration of the Business Associate or to carry out legal responsibilities.
- Business Associate may use or disclose PHI as required by law and in accordance with the **Client's** minimum necessary standard policy.

### **Client Obligations are as follows:**

- Client** shall provide Business Associate with the notice of any privacy practices that **Client** produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- Client** shall provide Business Associate with notice of any changes to, revocation of, or permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures, within a reasonable period of time after **Client** becomes aware of such changes to or revocation of permission.
- Client** shall notify Business Associate of any restriction to the use or disclosure of PHI that **Client** has agreed to or must comply with in accordance with 45 CFR §164.522 and HITECH § 13405(a).
- Client** shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by **Client**.

## **Terms and Termination**

The term of this Agreement shall be effective as of the final date entered on page [5] of this document and continue until terminated by **Client** or any underlying Services Agreement expires or is terminated.

A breach by Business Associate, or its agents or subcontractors, if any, of any provision of this Agreement, as determined by **Client**, shall constitute a material breach of the Agreement. If Business Associate breaches this Agreement, **Client** may, in its discretion (a) immediately terminate this Agreement; (b) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the breach or end the violation within a period not to exceed 30 days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

**Client** may terminate this Agreement effective immediately, if (a) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.

Upon termination of this Agreement for any reason, Business Associate shall return, or at **Client's** request, destroy all PHI that Business Associate or its agents or subcontractors, if any, still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall explain to **Client** why conditions make the return or destruction of such PHI not feasible. If **Client** agrees that the return or destruction of PHI is not feasible, Business Associate shall retain the PHI, subject to all of the protections of this Agreement, and shall make no further use of such PHI. If Business Associate elects to destroy the PHI, Business Associate shall **certify in writing** to **Client** that such PHI has been destroyed.

If this Agreement is terminated for any reason, **Client** may also terminate the Services Agreement between the parties. This provision shall supersede any termination provision to the contrary which may be set forth in the Services Agreement.

## **Additional Information**

- A reference in this Agreement to a section in the Privacy Rule means the Privacy Rule section as in effect or as amended.
- Business Associate may not subcontract any Services or assign any rights, nor may it delegate its duties under this Agreement without the express written consent of **Client**.
- Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than **Client**, Business Associate, or their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- The parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or joint associates.
- If any modification to this Agreement is required by law or required by HITECH or any other federal or state law affecting this Agreement, or if **Client** reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, **Client** shall notify Business Associate of such proposed modification(s) ("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within **thirty (30) calendar days** following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to **Client** its written rejection of such Legally-Required Modifications, the Business Associate access to PHI will be terminated and Client will expect the Business Associate to follow the termination guidelines listed under the subheading *Terms and Termination*.
- All notices which are required or permitted to be given pursuant to this Agreement shall be **in writing** and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or

certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

**If to Business Associate: PI BACK OFFICE**

<http://pibackoffices.com/>

**If to Client:** \_\_\_\_\_

(Client Name)

This Agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by both parties. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default. The parties execute this Agreement to be valid and enforceable from the last date set out below:

**PI BACK OFFICE LLC**

Signature



Name: Julianne J. Garcia

Title: CEO

Date: \_\_\_\_\_

Company Address:

PO BOX 2822  
Bremerton, WA 98310

Phone: 833-411-2121 \*4

Fax: 833-411-3131

\_\_\_\_\_ **(Client Name)**

Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Company Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**DEFINITIONS**

**"Breach"** shall mean any impermissible disclosure or use unless it is proven that there is a low probability that PHI was compromised via a detailed risk assessment by the covered entity and business associate, if applicable.

**"Client"** shall mean \_\_\_\_\_ (Client Name)

**"Covered Entity"** shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **PI BACK OFFICE LLC** (Business Associate).

**"Data Aggregation"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

**"Designated Record Set"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

**"Electronic Protected Health Information"** and/or **"EPHI"** shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, and shall include, without limitation, any EPHI provided by **Client** or created or received by Business Associate on behalf of **Client**.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996 and any amendments hereto.

**"HIPAA Security Rule"** shall mean the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 C.F.R. Parts 160 and 164 (Subparts A & C).

**"HITECH"** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

**"HITECH Act"** shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all its implementing regulations, when and as each is effective and compliance is required.

**"Individual"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 160.103. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

**"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information, and Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), that are codified at 45 CFR parts 160 and 164, Subparts A, C, and E and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

**"Protected Health Information"** and/or **"PHI"** shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and shall include, without limitation, any PHI provided by **Client** or created or received by Business Associate on behalf of **Client**. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to EPHI.

**"Required By Law"** shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR § 164.103, and any additional requirements created under HITECH.

**"Secretary"** shall mean the Secretary of the Department of Health and Human Services or his designee.

**“Security Incident”** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

**“Services Agreement”** shall mean the underlying agreement(s) that outline the terms of the services that Business Associate agrees to provide to **Client** and that fall within the functions, activities or services described in the definition of “Business Associate” at 45 CFR § 160.103.

**“Unsecured PHI”** shall have the same definition that the Secretary gives the term in guidance issued pursuant to § 13402 of HITECH.